

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION**

TRACEY E. GEORGE, ELLEN WRIGHT )  
CLAYTON, DEBORAH WEBSTER-CLAIR, )  
KENNETH T. WHALUM Jr., MERYL RICE, )  
JAN LIFF, TERESA M. HALLORAN, and )  
MARY HOWARD HAYES, )

Plaintiffs, )

v. )

Case No. 3:14-2182

WILLIAM EDWARD "BILL" HASLAM, as )  
Governor the State of Tennessee, in his )  
official capacity; et al. )

Defendants. )

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**EXHIBIT 1**

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JOURNAL AND PROCEEDINGS, 1953 CONSTITUTIONAL CONVENTION  
(excerpts)

JOURNAL AND PROCEEDINGS, 1953 CONSTITUTIONAL CONVENTION  
(pp. 197-199)

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FOR

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Journal of the Proceedings  
of the  
CONSTITUTIONAL CONVENTION OF 1953  
STATE OF TENNESSEE

WEDNESDAY, MAY 20, 1953

AFTERNOON SESSION

The Convention met pursuant to adjournment at 2:00 P.M. and was called to order by Mr. President Cooper.

Mr. Gilreath (of Wilson County) moved that the Convention resolve itself into a Committee of the Whole to consider the reports of the Committee on Amending, which motion prevailed.

Mr. President Cooper named Mr. Tipton (of Tipton County) as Chairman of the Committee of the Whole.

Mr. Tipton called the Committee of the Whole to order and declared the first order of business to be the consideration of the Reports of the Committee on Amending.

The Clerk read the Reports of the Committee on Amending which are as follows:

MAJORITY REPORT

TO THE PRESIDENT AND MEMBERS OF THE CONVENTION:

The Committee on Amending respectfully recommends to the Convention for adoption the following Resolution:

BE IT RESOLVED, That Article XI, Section 3, of the Constitution of Tennessee be, and the same is hereby amended so as to read as follows:

Any amendment or amendments to this Constitution may be proposed in the Senate or House of Representatives, and if the same shall be agreed to by a majority of all the members elected to each of the two houses, such proposed amendment or amendments shall be entered on their journals with the yeas and nays thereon, and referred to the General Assembly then next to be chosen; and shall be published six months previous to the time of making such choice; and if in the General Assembly then next chosen as aforesaid, such proposed amendment or amendments shall be agreed to by two-thirds of all the members elected to each house, then it shall be the duty of the General Assembly to submit such proposed amendment or amendments to the people, in such manner and at such time as the General Assembly shall prescribe. And if the people shall approve and ratify such amendment or amendments by a majority of all the citizens of the State voting for representatives, voting in their favor, such amendment or amendments shall become part of this Constitution. When any amendment or amendments to the Constitution shall be proposed in pursuance of the foregoing provisions the same shall at each of said sessions be read three times on three several days in each house.

The legislature shall have the right by law to submit to the people at any general election, the question of calling a convention to alter, reform, or abolish this Con-

stitution, or to alter, reform or abolish any specified part or parts of it; and when, upon such submission, a majority of all the voters, voting upon the proposal submitted shall approve the proposal to call a convention, the delegates to such convention shall be chosen at the next general election and the convention shall assemble for the consideration of such proposals as shall have received a favorable vote in said election, in such mode and manner as shall be prescribed. No change in, or amendment to this Constitution proposed by such convention shall become effective, unless within the limitations of the call of the convention, and unless approved and ratified by a majority of the qualified voters voting separately on such change or amendment at the first general election held more than six months after the convention. No such convention shall be held oftener than once in six years.

(Signed) F. S. HALL

JOHN S. FLETCHER  
WILLIAM C. TIPTON  
CHARLES A. STAINBACK  
LEWIS S. POPE  
E. BRUCE FOSTER  
W. M. MILES  
S. B. GILREATH  
ALAN M. PREWITT, JR.  
J. HARRY SMITH  
EVERETT R. COOK  
HARRY H. CHITWOOD

#### MINORITY REPORT

I respectfully disagree with the report of the majority of the Committee on the amending clause on the ground that the majority of the Committee disapproves the provisions of Resolution No. 12 presented to this Committee.

Resolution No. 12 contains an amendment drawn in accordance with the report of the Constitutional Revision Commission created under the provisions of Senate Joint Resolution No. 20 of the 74th General Assembly in 1945.

Resolution No. 12 provides for one legislative act passed by two-thirds vote of the General Assembly followed by submission of proposed amendments to the people, the outcome to depend on the majority vote of those voting on each proposed amendment.

This is the rule of the majority of those who vote on a question. It is the American way of government. It makes possible desirable amendments to our State Constitution, whereas, the majority report makes virtually impossible any separate amendments to the Constitution. Eighty-three years of inability to amend the Constitution is indisputable proof of the unamendability of Tennessee's basic law.

The majority report leaves the people no hope of amending the Constitution by separate amendment, and the proposed amendment contained in the majority report should not be approved.

(Signed) WALTER CHANDLER

## SUBSTITUTE MINORITY REPORT

## TO THE PRESIDENT AND MEMBERS OF THE CONVENTION:

The minority of the Committee on Amending respectfully recommends to the Convention for adoption the following Resolution:

BE IT RESOLVED, That Section 3 of Article II of the Constitution of Tennessee be amended so as to read as follows:

"Any amendment or amendments to this Constitution may be proposed in the Senate or House of Representatives, and if the same shall be agreed to by a majority of all the members elected to each of the two Houses, such proposed amendment or amendments shall be entered on their journals with the yeas and nays thereon, and referred to the General Assembly then next to be chosen; and shall be published six months previous to the time of making such choice; and if in the General Assembly then next chosen as aforesaid, such amendment or amendments shall be agreed to by two-thirds of all the members elected to each House, then it shall be the duty of that General Assembly to submit such proposed amendment or amendments to the people for approval or rejection at the first general election held not less than six months after adjournment of the submitting General Assembly, and in such manner as it shall prescribe. And if the people shall approve and ratify such amendment or amendments by two-thirds of the total vote cast for or against such amendment or amendments, voting in their favor, such amendment or amendments shall become a part of this constitution. When any amendment or amendments to the Constitution shall be proposed in pursuance of the foregoing provisions the same shall at each of said sessions be read three times on three several days in each House. The Legislature shall have the right, at any time by law, by two-thirds vote of all the members elected to each House, to submit to the people at a general election the question of calling a convention to alter, reform, or abolish this Constitution, in whole or in part, and when upon such submission a majority of all the votes cast shall be in favor of said proposition, then delegates shall be chosen, and the convention shall assemble in such mode and manner as shall be prescribed. The acts of such convention, whether affecting the whole or only parts of this Constitution, shall be submitted to the people for their approval or rejection at an election to be held in such manner and on such date after the final adjournment of the convention as may be fixed and determined by the convention; and such acts of said convention as shall be approved by a majority of all the votes cast for or against same, voting in their favor, shall become part of this Constitution."

(Signed) H. B. MCGINNESS  
C. S. RAINWATER, JR.  
ERNEST F. (JACK) SMITH  
C. C. SIMS  
FRED R. STAIR

If Resolution No. 12 is not adopted, I favor this report.

(Signed) WALTER CHANDLER

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(pp. 231-234, 237-38)



Delegates voting aye were: Messrs. Bates, Burn, Chitwood, Dodson, Frierson, Gilreath, Hatfield, Haynes, Holman, Hooper, Johnson (of Jackson County), Jones (of Warren County), McGinness, McGovern, Miles, Murray, Oakley, Pafford, Prewitt and Mr. President Cooper.—20

Delegates voting no were: Messrs. Adams, Alexander, Ambrose, Avery, Beard, Bennett, Carney, Chambers, Chambliss, Chandler, Colvard, Cornelius, Crossno, Davis, Denney, Dugger, Duggin, Dyer, Easterly, Fletcher, Foster, Gallimore, Gamble, Goldsmith, Gorman, Grubb, Haggard, Hall, Hampton, Harbert, Harwell, Henry, Hill, Holtsford, Howell, Johnson (of McMinn County), Jones (of Marshall County), Larkin, Lee, Mrs. McCallum, McGehee, McMurtry, Manheim, Marks, Matherne, Miller, Montedonico, Ogle, Parks, Patton, Pearson, Pope, Prescott, Rainwater, Richards, Mrs. Rodgers (of Shelby County), Rogers (of Campbell County), Miss Ross, Sidwell, Sims (of Davidson County), Sims (of Rutherford County), Smith (of Lake County), Smith (of Sullivan County), Spencer, Stainback, Stair, Stephenson, Taylor, Thompson, Tipps, Mrs. Todd (of Davidson County), Todd (of Sullivan County), Watson, Webb and Willett.—75

Delegates present and not voting were: Messrs. Cook and Tipton.—2

Mr. Tipton (of Tipton County) moved to amend as follows:

#### AMENDMENT NO. 7

I move to amend the Majority Report of the Committee on Amending by striking out in line 13 thereof the word "representatives" and inserting in lieu thereof the word "governor."

On motion Amendment No. 7 was adopted by the following vote:

Ayes .....	61
Noes .....	36

Delegates voting aye were: Messrs. Ambrose, Avery, Burn, Carney, Chambliss, Chandler, Chitwood, Cook, Cornelius, Crossno, Davis, Dodson, Dugger, Duggin, Dyer, Easterly, Fletcher, Gamble, Goldsmith, Gorman, Haggard, Hampton, Harbert, Harwell, Hatfield, Holtsford, Howell, Johnson (of McMinn County), Larkin, Mrs. McCallum, McMurtry, Manheim, Matherne, Miles, Montedonico, Murray, Ogle, Parks, Pearson, Pope, Prescott, Prewitt, Rainwater, Richards, Mrs. Rodgers (of Shelby County), Rogers (of Campbell County), Miss Ross, Sidwell, Sims (of Rutherford County), Smith (of Lake County), Smith (of Sullivan County), Spencer, Stair, Stephenson, Taylor, Thompson, Tipton, Mrs. Todd (of Davidson County), Todd (of Sullivan County) Watson and Webb.—61

Delegates voting no were: Messrs. Adams, Alexander, Bates, Beard, Bennett, Chambers, Colvard, Denney, Foster, Frierson, Gallimore, Gilreath, Grubb, Hall, Haynes, Henry, Hill, Holman, Hooper, Johnson (of Jackson County), Jones (of Marshall County), Jones (of Warren County), Lee, McGehee, McGinness, McGovern, Marks, Miller, Oakley, Pafford, Patton, Sims (of Davidson County), Stainback, Tipps, Willett and Mr. President Cooper.—36

Stephenson, Tipps, Tipton, Todd (of Sullivan County), Watson, Willett and Mr. President Cooper.—82

Delegate present and not voting was Mr. Hooper.—1

Mr. Frierson (of Maury County) moved to amend as follows:

#### AMENDMENT NO. 9

Amend the majority report by adding to the first paragraph or section the following:

“The legislature shall not propose amendments to the Constitution oftener than once in six years.”

On motion, Amendment No. 9 failed by the following vote:

Ayes .....	19
Noes .....	76

Delegates voting aye were: Messrs. Alexander, Colvard, Cornelius, Dodson, Frierson, Gallimore, Gilreath, Harbert, Hatfield, Haynes, Hill, Holman, McMurtry, Matherne, Miles, Oakley, Pope, Sims (of Davidson County), and Mr. President Cooper.—19

Delegates voting no were: Messrs. Adams, Ambrose, Avery, Bates, Beard, Bennett, Burn, Carney, Chambers, Chambliss, Chandler, Chitwood, Cook, Crossno, Davis, Dugger, Duggin, Dyer, Easterly, Fletcher, Foster, Gamble, Goldsmith, Gorman, Grubb, Haggard, Hall, Hampton, Harwell, Henry, Holtsford, Hooper, Howell, Johnson (of Jackson County), Johnson (of McMinn County), Jones (of Marshall County), Jones (of Warren County), Larkin, Lee, Mrs. McCallum, McGehee, McGinness, McGovern, Manheim, Marks, Miller, Montedonico, Murray, Ogle, Pafford, Parks, Patton, Pearson, Prescott, Prewitt, Rainwater, Richards, Mrs. Rodgers (of Shelby County), Rogers (of Campbell County), Miss Ross, Sidwell, Sims (of Rutherford County), Smith (of Lake County), Smith (of Sullivan County), Spencer, Stainback, Stair, Stephenson, Taylor, Thompson, Tipps, Tipton, Todd (of Sullivan County), Watson, Webb and Willett.—76

Mr. Tipton (of Tipton County) moved to amend as follows:

#### AMENDMENT NO. 10

Amend majority report by striking out in line 10 thereof the words “in such manner and at such time as the General Assembly may prescribe” and insert in lieu thereof the following words: “at the next general election in which a Governor is to be chosen.”

On motion, Amendment No. 10 was adopted.

Mr. Hooper (of Cocke County) moved to amend as follows:



## AMENDMENT NO. 11

Amend by striking from Section 1, Page 1, the language: "of all the citizens of the State voting for representatives, voting in their favor," and inserting in lieu thereof: "of all the citizens of the State voting on the proposed amendments."

Amendment No. 11 failed by a voice vote.

Thereupon the Majority Report, as amended was agreed to by the following vote:

Ayes	.65
Noes	.32

Delegates voting aye were: Messrs. Adams, Ambrose, Avery, Bates, Carney, Chambliss, Chitwood, Cook, Davis, Denney, Dugger, Duggin, Easterly, Fletcher, Foster, Gamble, Gilreath, Goldsmith, Haggard, Hall, Hampton, Hatfield, Haynes, Holman, Holtsford, Johnson (of Jackson County), Jones (of Warren County), Larkin, Mrs. McCallum, McGehee, McGovern, McMurtry, Manheim, Marks, Matherne, Miles, Miller, Montedonico, Murray, Ogle, Parks, Patton, Pearson, Pope, Prescott, Prewitt, Richards, Miss Ross, Sidwell, Sims (of Davidson County), Sims (of Rutherford County), Smith (of Lake County), Smith (of Sullivan County), Spencer, Stainback, Stair, Stephenson, Taylor, Thompson, Tipps, Tipton, Mrs. Todd (of Davidson County), Watson, Webb and Mr. President Cooper.—65

Delegates voting no were: Messrs. Alexander, Beard, Bennett, Burn, Chambers, Chandler, Colvard, Cornelius, Crossno, Dodson, Dyer, Frierson, Gallimore, Gorman, Grubb, Harbert, Harwell, Henry, Hill, Hooper, Howell, Johnson (of McMinn County), Jones (of Marshall County), Lee, McGinness, Oakley, Pafford, Rainwater, Mrs. Rodgers (of Shelby County), Rogers (of Campbell County), Todd (of Sullivan County) and Willett.—32

A motion to reconsider was tabled.

## EXPLANATION

Explanation by Mr. McGinness (of Smith County) of his vote.

I vote "no" for the reason that in my view no material amendment to Section 3 of Article XI is proposed by said resolution.

Mr. Tipps (of Coffee County) moved that the Committee of the Whole rise and report, which motion prevailed.

Mr. President Cooper called the Convention to order.

Mr. Cook (of Shelby County), Chairman, reported that the Committee of the Whole had been considering the Reports of the Committee on Amending and recommended to the Convention the adoption of the Majority Report of the Committee on Amending as amended by the Committee of the Whole.

On motion of Mr. Haynes (of Franklin County) the Convention adjourned until 10:00 A.M. tomorrow.

## RESOLUTION RELATIVE TO METHODS OF AMENDING THE CONSTITUTION

BE IT RESOLVED, That Article XI, Section 3, of the Constitution of Tennessee be, and the same is hereby amended so as to read as follows:

"Any amendment or amendments to this Constitution may be proposed in the Senate or House of Representatives, and if the same shall be agreed to by a majority of all the members elected to each of the two houses, such proposed amendment or amendments shall be entered on their journals with the yeas and nays thereon, and referred to the general assembly then next to be chosen; and shall be published six months previous to the time of making such choice; and if in the general assembly then next chosen as aforesaid, such proposed amendment or amendments shall be agreed to by two-thirds of all the members elected to each house, then it shall be the duty of the general assembly to submit such proposed amendment or amendments to the people at the next general election in which a Governor is to be chosen. And if the people shall approve and ratify such amendment or amendments by a majority of all the citizens of the State voting for Governor, voting in their favor, such amendment or amendments shall become a part of this Constitution. When any amendment or amendments to the Constitution shall be proposed in pursuance of the foregoing provisions the same shall at each of said sessions be read three times on three several days in each house.

The Legislature shall have the right by law to submit to the people, at any general election, the question of calling a convention to alter, reform, or abolish this Constitution, or to alter, reform or abolish any specified part or parts of it; and when, upon such submission, a majority of all the voters voting upon the proposal submitted shall approve the proposal to call a convention, the delegates to such convention shall be chosen at the next general election and the convention shall assemble for the consideration of such proposals as shall have received a favorable vote in said election, in such mode and manner as shall be prescribed. No change in, or amendment to, this Constitution proposed by such convention shall become effective, unless within the limitations of the call of the convention, and unless approved and ratified by a majority of the qualified voters voting separately on such change or amendment at an election to be held in such manner and on such date as may be fixed by the convention. No such convention shall be held oftener than once in six years."

Thereupon the Resolution was adopted by the following vote:

Ayes	.....	73
Noes	.....	22.

Delegates voting aye were: Messrs. Adams, Allen, Ambrose, Avery, Bates, Beard, Carney, Chambliss, Chitwood, Colvard, Cook, Davis, Denney, Dugger, Duggin, Dyer, Easterly, Fletcher, Foster, Frierson, Gamble, Gilreath, Goldsmith, Grubb, Haggard, Hall, Hampton, Harbert, Harwell, Hatfield, Haynes, Holman, Holtsford, Johnson (of Jackson County), Larkin, Mrs. McCallum, McGehee, McGovern, Mannheim, Marks, Matherne, Miles, Miller, Montedonico, Murray, Oakley, Ogle, Parks, Pearson, Pope, Prescott, Prewitt, Richards, Mrs. Rodgers (of Shelby County), Rog-

ers (of Campbell County), Sidwell, Sims (of Davidson County), Sims (of Rutherford County), Smith (of Lake County), Smith (of Sullivan County), Spencer, Stainback, Stair, Stephenson, Taylor, Thompson, Tipps, Tipton, Mrs. Todd (of Davidson County), Todd (of Sullivan County) Watson, Webb and Mr. President Cooper.—73

Delegates voting no were: Messrs. Allen, Bennett, Burn, Chambers, Chandler, Crossno, Dodson, Gallimore, Gorman, Henry, Hill, Hooper, Howell, Johnson (of McMinn County), Jones (of Marshall County), Lee, McGinness, Moss, Pafford, Rainwater, Miss Ross and Willett.—22

A motion to reconsider was tabled.

#### DELEGATES' EXPLANATIONS OF VOTES

Explanation by Messrs. Lee (of Monroe County) and Chandler (of Shelby County) of their votes.

Our vote is No to this amendment because we believe that an amendment to this Constitution should be gauged by a set number or percentage of those voting on the amendment itself rather than the absurdity which this proposal purports. It is impractical to place an abstract idea alongside or in conjunction with a concrete measure and expect the two to receive the acknowledgment of all those voting. The abstract will fall by the wayside just as any proposed future amendments to this Constitution will do and the reason will not be on the merits of the amendments, but it will be due to the apathic nature of the people toward constitutional amendments and in collusion with this fraudulent amending clause. For all practical purposes, this leaves only the convention method of amending the Constitution.

Explanation by Mr. Moss (of Madison County) of his vote.

In voting against the proposal to amend Article XI, Section 3, which provides for two methods of amending, I have been motivated by the following thoughts:

In the first place, the proposed amendment makes very little change, and I think it not worth while to bother and perhaps confuse the lay voter by putting it on the ballot. A number of amendments will be submitted to the people of the state for their approval on November 3 next, some of them will be long, and it is unlikely that many voters will take the time to read and understand them all. It would make the burden lighter if we leave off this one. I am agreeable to the first change proposed,—the matter of requiring a majority of those voting for Governor in lieu of the present requirement of a majority of those voting for Representatives. However, I could not agree with the suggestions that would have provided for ratification of an amendment proposed by the legislature by a simple majority, or even a two-thirds majority, of those voting on the amendment, for the reason that such a system would enable a small interested minority or pressure group to amend the Constitution, with only a very small turnout at the polls voting on the question.

The experience of this Convention has convinced me that the limited convention system affords ample safeguards, and is the easiest of the processes available.

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(pp. 734-742)



is almost impossible to ascertain. I submit it should be representatives in Congress, and in addition I have attached to it as exhibits a lot of information about the voting for Congress and voting for Governor, and a lot of other information that I think you will be interested in.

I just want to say that about my minority report.

CHAIRMAN TIPTON: The Clerk will read the amendment on the desk.

(The Clerk reading Amendment No. 1)

MR. MILLER: There is one other report, the Chandler report, that I believe has not been read.

CHAIRMAN TIPTON: The Clerk will read the Chandler minority report.

(The Clerk reading Chandler minority report)

CHAIRMAN TIPTON: Are there any other minority reports on the Clerk's desk that have not been read? If not, the Chair recognizes the Chairman of the Committee, Mr. Gilreath.

MR. GILREATH: Mr. Chairman and Ladies and Gentlemen, I am just following the custom of the committee chairmen in standing up to be shot at first in undertaking to explain this thing to you. I think that perhaps you already understand it, but the custom is to undertake to explain it.

Now, I would like to say this at the beginning, your committee worked long and faithfully in evolving the reports which have been read to you; we had numerous meetings, a great many resolutions have been introduced in the Convention. We have had committee meetings by night and by day, all of them open meetings at which the press was present and any number of the public who desired to be.

We considered each one of these resolutions, and invited the authors of each one of them to come before the committee and speak on them, and each author, I am glad to say, did so. I mention that because that is the background of the majority and minority reports.

Let me say this, when I speak of Section 3, as I propose to refer to it a number of times, I am going to leave off Article XI; I will ask you to understand when I speak of Section 3, I mean Article XI, Section 3.

Now let's take up and consider the reports and see just where we are; the majority report leaves Section 3 intact except there has been elided therefrom the statement or the sentence, "the legislature shall not propose amendments to the Constitution oftener than once in six years"; and then the last sentence of Section 3 is carried into the second paragraph of the majority report.

There are two minority reports, one I shall call the McGinness report. I have not had a copy of that amended minority report; the original has been read to you and is in the process of being mimeographed. Now, the principal difference—well, there are two principal differences now between the amended McGinness minority report and the majority report.



Let me say here the majority report is signed by 12 and the original McGinness report was signed by 6 and conditionally by Mr. Chandler. I understand that the substance or amended report is signed by Mr. McGinness and Mr. Rainwater.

Now, to take up the McGinness report, it coincides in the first paragraph with the majority report except that it would allow an amendment to be carried and to be a part of the Constitution by a two-thirds vote of those voting on the amendment in the election.

It also provides in the second paragraph that a constitutional convention whether general or limited may choose the time of the holding of the election at which the Constitution or the proposed amendments can be voted on. The majority report requires it to be at the next November election coming not less than six months after the adjournment of the Convention.

I know that is a number of details to keep in your minds in voting on these questions; all I can do is explain them as simply as I can.

Then comes the Chandler report, it is the second minority report signed by Mr. Chandler, and under its provision a legislative amendment, I mean an amendment proposed by a convention, either general or limited, under Mr. Chandler's minority report, a legislative amendment is required or would be required to pass by a two-thirds majority and then would be published and then would be voted on by the people; and if the proposed amendment were carried by a majority of those voting for and against the amendment in the election, it then would become a part of the Constitution.

I have not been able to get hold of a copy of Mr. Miller's proposed amendment to the majority report. He has asked to be allowed to explain that, and since I have not read it and would have to undertake to explain it from having heard it read, I will, with your consent and with your permission, pass over an explanation of it or an attempted explanation of it and let him explain it a little bit later on.

Now, Mr. Chairman, I shall at this time—I might forget it at the end of these remarks which I hope will be brief—I wish to move the adoption of the majority report and say, in support of that motion, that this is the most important question, in my opinion, which has been or will be submitted to this Convention.

Others of you may not agree with me, and that of course is your privilege. I wish to say this, the principal question in the Committee of course was by what majority, if any, should constitutional amendments be passed in order to become part of the Constitution. The majority report stands on the language of Section 3, that the amendment should be carried by a majority of those voting for representatives.

Let me review the constitutional provisions for you for just a moment. In the Constitution of 1796 there was just one method of amending the Constitution and that was a convention called for that purpose, and that convention had to be carried by a majority of those voting for representatives. That was 157 years ago.

In 1834, Section 3 was written into the Constitution that was called as of that year; it contained the same provision. It however contained no provision for the calling of a constitutional convention.

When the convention met in 1870, the language of Section 3 was carried, I think, verbatim from the Constitution of 1834 into the Constitution of 1870, and then there was added to the Constitution of 1870 in Section 3 the last sentence, permitting the calling of a constitutional convention.

When this matter was before your committee various and diverse and sundry modes of requiring a majority of these voting in the election were considered. An overwhelming majority of that committee felt that something more than a mere majority of those voting should be required. We discussed this question, that is by what percentage of the votes cast should the proposal be carried; we discussed hinging it on the voting in the presidential election; we discussed hinging it on the vote in the Governor's race; we discussed hinging it and making it depend on the vote for congressional representatives, and one by one, for reasons which seemed sufficient to the committee, each one of these was rejected by a majority.

Now, Mr. McGinness, and some of the others, thought it shouldn't be hinged at all, that a two-thirds majority voting in its favor should carry; Mr. Chandler thought that a bare majority should carry, and hence the three reports.

Here, I wish to say this, that a state government is a government of reserved powers, and a state constitution is a constitution of reserved powers. On the other hand, as all lawyers know, the Federal Constitution is a Constitution of granted powers and the Federal Government is a government of granted powers.

Now, let us consider, for just a minute, the difference. When Congress passes a law, before its constitutionality can be constitutionally upheld, and I am not talking about the way they have been upholding some of them in recent years, (applause) you have got to be able to put your finger down on a provision in that constitution which expressly or impliedly authorizes that law or it is unconstitutional and void and no law. On the other hand, when the legislature of a state passes a law what do you look for, an authorization; no, no. It is valid unless there is a prohibition against it, either in the Constitution of the state or in the Federal Constitution, the Federal statutes or a Federal treaty.

Now, I said that this report or these reports which we are considering now is by far the most important of any question which this Convention has to consider, and I submit that that is so. The Constitution of Tennessee is substantially the only protection which you have, and which I have and which the people of Tennessee have, from tyranny. I know that many say there is no such thing as tyranny in America.

I marvel at the strength with which our forefathers constructed the foundations upon which our governments stand and how simple things they wrote into them, things I am sure I would have said "everybody knows that or everybody understands that," indictment by Grand Jury, the right to trial by jury, due process of law, the writ of habeas corpus, and many others.

I am afraid I would have said those things can never be questioned on the face of the earth, but they didn't take a chance on it, they wrote them into the Federal Constitution and they have written them into the State constitutions. As Mr. Sims so ably

explained yesterday afternoon, they also wrote into the constitutions the divisions of the sovereign powers, following Blackstone's statement that law was three things, a thing to be ordained, a thing to be construed, or interpreted, and a thing to be executed.

You know, when the Roman Emperors of old, under the civil law which still exists today, when the old Roman Emperors wrote a decree, and a question came up as to what they had meant by what they had said, the matter was referred back to them and then they, by rescript, stated what they had meant by what they had said, and the rescript had all the force of the original decree from the date of the original decree.

Now, in every one of these American constitutions, and they are your only protection from the most violent and tyrannical state action, is an elaborate system of checks and balances, and yet there is not a single one of these checks and balances which cannot be removed from your Constitution by an unwise and an improvident constitutional amendment.

The rivers of tyranny throughout the world are flowing today at full tide; what a terrible, terrible thing is sovereignty. The law professors and judges have tried to describe it; it is the supreme power to govern. That is about as good a description as you get, a power from which there is no appeal on this earth. The only appeal is to the Maker of all of us, and also the Maker even of the Sovereign Power.

How much thought have men given to curbing the forces of nature, how many thousands cross the ocean every year upon the sea and in the air, and how few of them die. Man has overcome, in large measure, the forces that attack him from a natural standpoint, and yet he stands bewildered before the forces of sovereignty.

About the only thought that has been given in the whole history of man to curbing tyranny has been in England and in the United States of America, and our constitutions represent that thought and that effort and that work and they should not lightly be changed.

Now, I hold that people in civilized society are entitled to live in peace; Blackstone said peace was the very end and foundation of civil society. They are entitled to live and they are entitled to live in peace. People should not be required to wear armor against a changing from day to day of that basic law. And the constitution of the state is the basic law of the state, containing the principles upon which the government is founded, regulating the division of the sovereign powers, directing to whom those powers should be confided and the manner in which they should be exercised.

I am so anxious that this Convention go down in history as a constitutional convention and not as an unconstitutional one. I don't know what the people are going to do with the amendments that have been proposed; there are some great and radical changes. I have heard it argued from this platform that it is incumbent upon these delegates to give the people a chance to vote on something; I do not subscribe to that.

On the opening morning of this Convention, that great lawyer and Justice, the Chief Justice of our Supreme Court, stood right over there and I held up my right hand and swore to support the Constitution of the United States and the Constitution of Ten-



nessee and I mean to stand on it and I believe I have stood on it. I know I have done as my conscience has directed me and to the best of my ability to discern and to judge.

Now, this statement has been made from the platform also just a few times and that is that we have a selling job to do to the people and that we are bound by what the Convention does; I do not subscribe to that. You can't bargain your conscience away and neither can I bargain my conscience away to any majority however great or howsoever high in our esteem the members of the body may stand.

Let us talk just a little bit about an amendment to the Constitution; this Convention was limited, I think, to six sections of the Constitution. How many amendments and counter amendments have been proposed here? About 100 resolutions and counting the other motions from the floor which have been reduced to writing, as to the number of which I can only guess. If we change this amending clause how many amendments will be proposed in the next legislature?

A Constitution should be difficult to amend; it is the Constitution of the majority and it is the Constitution of the minority also. If we change this amending process there will be a great avalanche of amendments proposed. I think that when Mr. Fletcher introduced, or held in his hand, the other day the Georgia ballot containing, in one election, some 47 proposed amendments to the Constitution of Georgia, I think that he did a great public service.

I had heard of "bedsheet ballots" in Georgia and in California; now, they are not called bedsheet ballots, my friends, because people sleep on them but because they are the size of bedsheets and full of printed matter which the people have to vote on; 95 amendments adopted in Georgia since 1945; a matter of 200 amendments, so I am told, to the Constitution of California in about the same number of years.

I have been told, I do not know that this is true, that the Constitution of California was amended some fifty times in two years. This is a serious business, this constitution is the organic law, it is not a statute passed by the legislature. Now let us consider for a moment the other two proposals; let us take the McGinness report.

Under it, if the legislature proposed an amendment as it provides, and the amendment were submitted to the people and one vote were cast for it in Tennessee, that would be two-thirds and the constitution would be amended. If three votes were cast on it, one against it and two for it, the Constitution still would be amended.

Under Mr. Chandler's report, if only one vote were cast, and that one vote was for it, the Constitution would be amended, and of course two out of three would be more than a majority and under his report the Constitution still would be amended.

Now, you may say that I have reduced that to an absurdity, but it is my experience that anything that will not work on the lowest common denominator will not work on the highest or on any of the denominators in between; the principle is identical, the principle is exactly the same.

In California a few years ago, they had a constitutional amendment that was popularly known as "ham and eggs" every Thursday; if we relax the constitutional provi-

sion and then the people should ratify it, the next amendment might be to import kangaroos from Australia or white elephants from India, and Heaven only knows what might be the substance of the great mass of amendments that would be submitted to the people, and which will harass them from election to election just so long as that provision remains in the Constitution. Now, please understand me, I don't question the sincerity of any of these gentlemen; I know they are perfectly sincere in what they propose and they are absolutely honest also, but I am trying to demonstrate the unwisdom of their proposals and the wisdom of the majority proposal. You can apply this to me, too, if you wish to do so, but I want to say here that most of the harm that has been done to the people in this world has been done by the people who were sincere; a man who is simply dishonest and not sincere in his dishonesty is not too dangerous a man; it is the man who is sincere, like the people of the inquisition were perfectly honest in lighting the fagots around those that they burned at the stake. The people in New England were perfectly honest when they burned witches; you cannot question their honesty. I simply point that out to show that because a person is sincere does not mean he is right, and you can apply what I have said to me; I may be wrong about this, but I certainly think not.

There has been more human progress in the world since this language in the majority report appeared in the Constitution of 1796; there has been more material progress in the world than was in the whole history of man before that time. In 157 years just look what has happened; many times I wonder if I am the same person living in the same world that I was born in and knew for the first 20 years of my life. Talk about impeding progress, I just wonder if we haven't gone too fast. How wonderful it would be if the human soul could keep pace with material progress, it would be a Heaven on this earth and we would be in the midst of the millenium.

We have considered a number of reports here, a number of reports or proposed amendments and every single one of those reports has been referred back again to a committee. On these legislative amendments, my friends, there is no committee to refer it back to. Under the provisions of these two minority reports, of two-thirds voting in one, and a bare majority in the other, the Constitution will stand amended.

The report of the majority provides three modes for amending the Constitution, one, the legislative mode in Section 3, two, the general convention mode, and three, the limited constitutional convention mode.

Now, I do thank you for your kind and courteous consideration of me and of the majority report during these remarks which were more extended than I ever dreamed they would be.

(Applause)

MR. CHANDLER: I would like to call up the motion which is on the Clerk's desk and which I would like to have read now.

CHAIRMAN TIPTON: It has been moved that the majority report be adopted; is there a second to that motion?

(Motion was duly seconded)



MR. POPE: This resolution which is the majority report, if there is any change in Section 3, what is it as it now stands?

MR. GILREATH: The change in Section 3 in the majority report is this; one sentence is stricken from Section 3 and I think it should be restored. That sentence is, the legislature shall not propose amendments to the Constitution oftener than once in six years. I think that should be restored.

MR. POPE: That is the only change as I understand it in Section 3?

MR. GILREATH: Yes sir, except the last sentence which is carried over into the second paragraph.

MR. FOSTER: I will ask you, sir, if the addition of the last paragraph or the last sentence in the majority report does not add a requirement which is not now in the Constitution, that the result of a constitutional convention must be resubmitted to the people before being approved.

MR. GILREATH: Yes, sir, that is true; I stated that the last sentence of Section 3 was carried over and the general convention is worded along with the limited convention, that is true; and then it has this statement, the constitutional convention shall not be proposed oftener than once in six years.

MR. BURN: You spoke about taking your oath as a member of this body; I want to ask you if you know that your oath to support the Constitution of Tennessee prohibits and restrains you from proposing amendments?

MR. GILREATH: No, sir, I am proposing an amendment now.

MR. BURN: That is what I asked you, if that was true—.

MR. GILREATH: Well, I think my first answer obviates an answer to the last question.

MR. DODSON: Do I understand there is no report from the Committee on Amending which provides that no change be made in the amending clause as it presently exists?

MR. GILREATH: Mr. Dodson, there is not; there were only two members of the Committee who felt that Section 3 in its entirety should be preserved exactly as it is. Now, a great majority, twelve, felt that the provision for the limited constitutional convention should be secured now and that the last sentence of Section 3 should be interwoven with the provision for a limited constitutional convention and that both should be submitted to the people for their ratification before it became law.

MR. DODSON: You say that, as I understand it, some of the members of the Committee felt that the provision for a limited constitutional convention should be secured?

MR. GILREATH: They felt it should be secured by an express provision in the Constitution, yes, sir.

MR. DODSON: Judge, if the limited constitutional convention cannot be held and if amendments proposed by limited constitutional convention and adopted by the people are not proper, then what difference would it make, sir, if this Limited Constitutional Convention submitted such a proposal to the people and it was adopted as part of the proposition?

MR. GILREATH: Mr. Dodson, you are arguing right down my alley, but a majority didn't agree with me on that and I submitted to the will of the majority on that Committee.

MR. DENNEY: I want your judgment about this; you put a provision in the majority report, I mean it is in there, spelling out a limited constitutional convention system under which we are operating, and if we have an election on some cold day in January and five per cent of our people vote for it and the three big cities vote against all of these amendments, what would be the condition of our Constitution in regard to the amending process should this be defeated; would we still in your opinion have the limited constitutional convention?

The reason I ask the question, I want to see if we could still have the limited constitutional convention?

MR. GILREATH: In my opinion, the failure of the people to carry any of these amendments would in no wise affect the law. Of course, there is some possibility that at some time the Supreme Court might hold a limited convention to be unconstitutional or not to be authorized by the Constitution.

MR. MANHEIM: Judge, a large number of amendments have been submitted to the people and have been defeated; do you happen to have any data on the number of votes that were cast and those amendments, how far apart they were from the majority?

MR. GILREATH: Mr. Manheim, I have often marveled at the simplicity of the amending process under Section 3; all on the earth it requires is that a majority voting for representatives shall vote for a constitutional amendment and it is amended; it is simple and it is certain.

It is some trouble of course to calculate the number of votes cast for representatives; it is some trouble to make that calculation, but it has always been possible to calculate it and the provision has stood in the Constitution for 157 years, as I said a while ago.

Now, with respect to the statistical data, I am sure that these other gentlemen from their activities, I am sure that they will have much to say about the votes cast. Now, I have a number of statistics on the different amendments here before me and I would be glad to read them but it would be a bunch of figures; I certainly have no objection to reading them and would gladly do it if you so desire.

MR. DENNEY: Give us a few of them Judge.

MR. GILREATH: All right; according to the information—.

MR. FLETCHER: Those figures are here in the exhibits on the desk.

MR. CHAMBLISS: They are all in the exhibits in the minority report.

MR. GILREATH: In 1940, according to the information I have—before I give you this, this is what is commonly termed statistics. I wish to make this observation and give you the benefit of one of Mark Twain's sayings on statistics; he said there are three kinds of lies, ordinary lies, downright lies, and statistics, and I put mighty little stock in statistics.

I have the information here that in 1940 an amendment to increase legislative pay was submitted and the popular vote on that was, Aye, 158,216; No, 77,614; that makes a total of 235,830. The vote on representatives in the same year was 377,111. In 1940, on the Governor's term, to increase it to four years, the vote was 171,209; that is Aye, 171,209; No, 68,506; that is a total of 239,715; and the total vote on representatives was 377,111.

In 1950, on non-diversion of the gas tax, which I submit was a revenue measure and had no place in the Constitution whatever, the popular vote was Aye, 115,235; No, 38,777, a total of 153,030; the total vote on representatives was 253,184.

MR. OGLE: Judge, there is no difference in the minority report—there is no change there?

MR. GILREATH: No change from Section 3 in that language, no, sir.

MR. OGLE: Does that mean the vote for the members of the House of Representatives?

MR. GILREATH: That is the way it has always been construed and the way the calculation has always been made.

MR. OGLE: Doesn't it make for some difficulty in number voting for or against the members of the House?

MR. GILREATH: I think there has never been any difficulty experienced in determining that; I have never heard of it; it has been done by the Secretary of State a number of times in my life and there has never been any question made on it.

MR. MILLER: Mr. Chairman, and Members of the Committee, I would like to talk for a few moments on an amendment which I offered to the majority report.

I had been very much concerned from the very moment that I announced my candidacy as a delegate to this Convention with the question of what should be done with the amending process in our Constitution.

My first reaction to it was that the formula which we have in the Constitution for submission to the people by the legislature of proposed amendments was too rigid and unworkable and should be changed. However, after giving the matter careful consideration and thought and study, I have reconciled my mind to what I would call a rather difficult formula for submissions of amendments by the legislature to the people, largely because we have spelled out in the Constitution in Section 3 of Article XI a flexible, workable procedure for calling a constitutional convention.

That procedure has been approved by the Supreme Court of Tennessee and is the procedure under which this Convention was called. With the possibility of amending

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(Miss Ross introduces her niece, Katherine Ross Grant, of Johnson City.)

MR. MCGINNESS: Mr. Chairman, at this point I wish to move that what appears on the record as a substitute minority report be substituted for the majority report.

CHAIRMAN POPE: I might say there are two or three motions that would have to be disposed of before we reach that.

MR. MCGINNESS: I understand that.

CHAIRMAN POPE: Do I hear a second?

(Motion was duly seconded)

MR. MCGINNESS: I understand, Mr. Chairman, that two amendments are to be voted on before.

CHAIRMAN POPE: Yes.

THE CLERK: There is another proposed amendment on the desk.

MR. MCGINNESS: Mr. Chairman, if any delegate who wishes to hear what I have to say and is unable to do so, if he will kindly call my attention to it, I will get by this microphone.

Mr. Chairman, and Members of the Committee of the Whole, we have been privileged to hear on yesterday and this morning, two masterful addresses, one by the brilliant Dean of the Law School of historic Cumberland University and the other by an eminent Tennessean, one of the delegates from the great County of Shelby who has a long and honorable career in public service, dealing with the fundamentals of our organic law, with somewhat different viewpoints and with somewhat different philosophies.

I know you have been interested and enlightened just as I was by these two great speeches, and as was suggested by each of them our action on this particular matter will constitute perhaps the most important and far-reaching single decision that we will make during this Convention. It will determine for a long time to come the mode and manner of amending the Constitution of Tennessee.

Two reports have come out of this standing committee, one signed by twelve members and the other by six. I realize from my own experience here and elsewhere that something in the nature of a presumption in favor of a majority report arises in the mind, a disposition to cast upon the minority the burden of proving its case. After all, there is nothing sacrosanct about a committee report, either majority or minority, and I know that in a matter of this gravity each and every delegate to this Convention will regard himself or herself responsible only to his own conscience and judgment and constituency.

Mr. Chairman, may I be privileged a moment of irrelevancy, so to speak, in order that I may say I have been much gratified by the way and manner and spirit in which this Convention has functioned up to this time, no cliques or factions have been in evidence; no partisan politics has entered in; nothing in the nature of an oligarchy has



raised its head assuming to dictate or to dominate; no bitter words have been spoken. It is a free swinging Convention, 99 delegates, open-minded, each having respect for the views of his fellows, yet each conscious of his own individual responsibility, seriously and earnestly seeking to reach correct conclusions and make wise decisions as representatives of a great and proud commonwealth. I feel honored and proud to be a member of such a body.

Now, Mr. Chairman, to the matter at hand; I would like, although you are perfectly familiar with them, to recite at this point the salient features of Section 3 of Article XI. There are at present, as you are perfectly well aware, two amending processes provided, the legislative method and the convention method.

As to the first, any legislature by a majority of all the members elected to each House may propose an amendment to the Constitution; it is referred to the next succeeding General Assembly and if two-thirds of all the members elected to each House of that General Assembly approve the proposed amendment, it is referred to the people for approval or rejection, and becomes a part of the Constitution, if, in the language of this section, it shall be voted for by a majority of all the citizens of the State voting for representatives.

As to the convention method, any legislature by a majority vote may submit in an election to the people the question whether a convention shall be called to alter, reform or abolish the Constitution in whole or in part.

Now, as to these reports, and I know my good friend, Mr. Chandler, will not object to my referring to them as the majority and minority reports, I am not disregarding his but for convenience will refer to these two as the majority and minority reports.

The majority report, that is to say, the resolution contained in the majority report, makes no change in the amending process; it simply expressly authorizes the holding of a limited constitutional convention such as is in session in this hall at this very moment.

Those signing the majority report thought it important to forefend against the possibility that some Supreme Court at some future time would reverse a decision recently made in consequence of which we are here today. My position in the Committee on that proposition was this; if I were in favor of retaining the present amending provision of the Constitution, I would oppose submitting anything to the people. I can imagine if this majority report shall be adopted what might take place. Next November when I go down to the voting place to cast my vote on these amendments, some intelligent, alert voter perhaps will say to me, "Mr. McGinness, what is involved in this question here on amending the Constitution." "Well, there is really nothing involved," I would have to tell him, "They just wanted to give express authority for a limited convention." "You said a limited convention? What was that you held down in Nashville last spring when we voted you to?" "Well, that was a limited convention." "Well, why submit that question?" "Well, I don't know."

I don't know what he could say but I imagine his reaction would not be anything that we would be proud of. Well, that is the majority report; if you want to maintain the status quo, vote for it.

The minority report makes one and only one—, before I leave this question, though, of authorization of the limited Convention, let me say that we eliminated the matter as an issue and also provided for it in our resolution; so if you are concerned about that, it is in both.

The minority report makes one and only one material change in the amending process and I hope you will get this, because it is the crux of the whole matter. There is just one material matter for consideration in the whole thing, and that is this: the minority report provides that if the legislature proposes an amendment, if when submitted to the people for ratification or rejection it shall receive two-thirds of all the votes cast on the proposition, it shall be approved. In other words, if twice as many vote for the amendment as vote against it, it shall become a part of the Constitution, whereas, as you know, under the present provision in order to ratify it, it must receive the majority of all those cast for representatives.

Mr. Chairman, I want at this point to read an editorial that appeared in the *Tennessean* Sunday morning, May 10th, with a headline, "Provide For a Limited Constitution." I am reading it for one purpose only and that is to call your attention to what I regard as a sound exposition of the inefficacy of the present constitutional provision with respect to legislature-proposed amendments; keep that in mind now.

"It is no accident that the Tennessee Constitution has not been changed in the last 83 years; rather, the reason why this State has the oldest unamended Constitution of any of the 48 commonwealths is because of the labored process necessary to alter it. Generally speaking, there are two ways in which amendments to the various State constitutions can be submitted to the people for approval or rejection; one is by the constitutional convention, the other by the legislature. The State's Constitution provides for both, but the latter method makes it so difficult it is doubtful that it would ever result in any amendment. The difficulty is the requirement that a majority of all those voting for representatives, not just a majority of those voting on the amendment, must approve any amendment proposed by the legislature. It is well established that thousands of voters just simply ignore such seemingly complex questions. As a result—" and this I do not agree with "—the Constitutional Convention appears to be the only hope for changing this State's Constitution, and it should be noted that this is the only way in which this document has ever been altered. Scores of efforts in the past to amend the Constitution met with failure; opponents to any change always were able to defeat any movement to amend the Constitution by leading the people to believe that a Convention might result in the adoption of a measure providing for a state income tax;—" and that hobgoblin has been dealt with by Mr. Chandler. "After numerous setbacks, advocates of revision were successful in having the people approve a limited convention. As a result, we now have a Convention in session, limited to the consideration of six matters. Oddly enough, one of the six subjects is the amending process. The committee of delegates is urging that the Convention propose a provision in the Constitution authorizing a limited session; there is none now. The legality of the present limited convention was upheld by the State Supreme Court. In the future, however, with the court membership different it is possible that the judges may disagree and hold such a convention illegal; because of that it is important that the present Convention

propose to the people an amendment authorizing a limited convention. The Constitution is a basic document; it should not be subject to the whims of politicians. However, it should not be so drawn to kill all efforts to amend it. To keep step with changing times, a provision for a limited convention would undoubtedly be in the public interest."

While agreeing with the view here expressed, that the present provision requiring a majority of all the members voting for representatives renders the legislative method of amending the Constitution nugatory for all practical purposes, I dissent from the view, the implied conclusion that this legislative method should be abandoned. Of course, it will not be abandoned; it will be retained; both methods will be retained. Why abandon the legislative method? Why not amend it so as to give it utility? Forty-seven states of the Union have the legislative method of amending the Constitution. The majority report while not in terms recommending abandonment of the legislative method of amending the Constitution accomplishes the same result by perpetuating its impotency.

The question is whether the present provision of Section 3 of Article XI shall be retained or whether it shall be changed; and if changed, what shall be substituted for it? Now, let us take a look at the provision with a view to determining whether it should be changed or retained. Here is the exact language; that is, after it has been approved by two legislatures then "it shall be the duty of the General Assembly to submit such proposed amendment or amendments to the people in such manner and at such time as the General Assembly shall prescribe, and if the people shall approve and ratify such amendment or amendments by a majority vote of all the citizens of the State voting for representatives, voting in their favor, such amendment or amendments shall become part of the Constitution."

That means, I take it all will agree, that this legislatively proposed amendment must be submitted to the people at an election in which representatives in the General Assembly are being elected, and then in order to have it ratified it shall receive a vote equal to a majority of all the votes cast in that particular election for representatives.

Now, in the first place, it seems to me anomalous that any question should be decided by persons not participating in the decision, that an election should be decided by persons not voting in the election.

Before I overlook it, I just want to say that if for no other reason this provision should go out of our Constitution because it is impractical to ascertain—, I might say it is impossible to ascertain, how many votes are cast for representatives in an election in those counties where more than one representative is elected. Gallup and all his staff couldn't figure it out to save their lives, how many votes are cast for representatives in the county of Davidson in any election.

Now, much has been said and more will be said here to the effect that our Constitution should not be subject to amendment by easy methods, so-called, that the consequence would be to clutter up the instrument with whims and vagaries of the passing hour. To that view, I fully subscribe; to that philosophy, I say a hearty amen. No delegate to this Convention is more conservative in this regard than it is my purpose



and intention to be. Why, I am generally speaking ultra-conservative, too conservative, I fear.

Up in my county on more than one occasion when I have signified opposition or disapproval of some so-called progressive matter, which perhaps was progressive, they would refer to me as old Confucius; and in our Committee when I first found myself catalogued among radicals or liberals, I just felt like a stranger to myself; I just didn't think it was "me."

I should say right here, I think, in order not to appear inconsistent, that as a member of the Frierson Commission, my good friend, Cecil Sims, being one of my colleagues, I was not in favor of the liberalization of this section to the extent that a majority of the committee was, and I did not favor the recommendation and report as it was submitted. On that occasion, I was regarded as too conservative; in this committee, I was regarded as too liberal; so, I have the satisfaction of knowing that I have been at least fifty per cent right, and, of course, in my own judgment and opinion, I have been one hundred per cent right.

Now, too liberal? Who can say, Mr. Chairman, and members of this Committee, that an amending process whereunder an amendment must be proposed by a majority of one legislature, approved by two-thirds vote of a succeeding legislature, and again approved by a two-thirds vote of the sovereign people, twice as many voting for it as against it—who can say that such an amending process will not fully protect the integrity of our Constitution and preserve its constancy.

The majority on this Committee seem adamant in their position that ratification must be by a majority of all the votes cast for representative, that is to say, must be by a vote equal to a majority of all of the votes cast for representatives. Well, what is the same thing to all intents and purposes is that it must receive a vote equal to a majority of all of the votes cast in that particular election without regard to the proportion of the vote for or against the amendment.

As I said a moment ago, that principle is that those not voting, vote against it, and to give a full application to that principle we should say that it should be necessary for ratification that it receive a vote equal to a majority of all the eligible voters in the State. Now, as I said a moment ago, that is an anomaly to begin with; it ought to be taken out of our Constitution.

As Mr. Chandler has so ably pointed out, let us bear in mind that the entire Constitution of 1834 was ratified by a majority only of the votes cast for and against the Constitution, and likewise the Constitution of 1870. Moreover, these amendments that we shall propose in this Convention will be approved, if at all, by a mere majority of votes cast for and against these amendments. Why do they denounce approval of legislature-proposed amendments by a two-thirds majority, and give their blessing to ratification of convention-proposed amendments by a bare majority? I can discern no consistency in that sort of position.

In order to justify it, we would have to arrogate to ourselves more capacity and more sagacity than perhaps would be justified; in other words, they say, "No, it is not sufficient that an amendment which has received the approval of two legislatures, one by a two-thirds majority, be approved by a two-thirds vote, but an amendment that has been approved by us, it is all right that it be approved by a mere majority of those voting for or against it."

Now, I would just like for some of these able gentlemen, and they are able gentlemen, to tell us about the consistency of that, if they can find any. I have heard it suggested from the floor here yesterday when somebody asked a question—I don't know who it was—it has been suggested that the convention-proposed amendments have three elections back of them; it has been fortified by three elections already; first, the election submitting the question of whether an election shall be held; such an election was held last August.

Now, what relation did that election have to the question of what vote should be required to ratify one of our proposed amendments; none on earth, of course. Then, they say they had another election that afforded knowledge and information of these amendments, and so forth. They had an election last fall for delegates. Jim Smith and John Jones are candidates for delegate up in Smith County, say, and Jim Smith was elected. In the name of common sense, what has that to do with the question here, as to by what vote an amendment to the Constitution should be ratified; none at all. So, away with the idea that the thing has three elections back of it; all it has is our approval, and the other has the approval of two legislatures and one by a two-thirds vote.

Now, ladies and gentlemen of the Committee, I just want to call your attention to this in closing; the amending process in the State of Tennessee is the most stringent of all the forty-eight states, and when they tell me it should not be disturbed or liberalized to any extent, I think that we must be about in the position of the soldier who said all the company was out of step except himself; and if the resolution embraced in this minority report shall be adopted, ours will still be the most stringent amending process of all the states of the Union, if we except the procedure in five or six states that requires a majority of all the votes cast in the election for approval.

Now, this in all probability, will be the last public service I shall ever be privileged to undertake, and it has been my sole and only concern during my service in this Convention to so act and vote as in my humble judgment and opinion would best serve the public interest.

This, as my long-time friend who presently occupies the Chair said on an occasion in the early days of this Convention, is not a controversy between persons or between groups, and the result will not be regarded as a victory or a defeat for anyone.

When you have registered your judgment on this matter, I shall be perfectly content with it, but secure in the thought that I have done the best I could.

(Applause)



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MR. DODSON: I move you, sir, the adoption of the resolution, as adopted by the Committee of the Whole.

MR. CHITWWOD: Second the motion.

MR. PRESIDENT COOPER: Are the delegates ready for the question?

(Calls for question)

MR. PRESIDENT COOPER: I will ask the Clerk to call the roll; those voting in favor of the resolution, as recommended by the Committee of the Whole, will vote aye, those opposed will vote no; do the delegates desire that the resolution be again read?

(Cries of no)

(The Clerk proceeded to call the roll)

TH CLERK: Ayes, 65; noes, 20.

MR. PRESIDENT COOPER: The Resolution on Suffrage, as recommended by the Committee of the Whole, is declared duly passed and without objection the motion to reconsider will go to the table.

MR. STEPHENSON: I vote no with the same explanation as in the Committee of the Whole.

MR. ALEXANDER: I move that the Convention stand adjourned until ten o'clock tomorrow morning.

(Motion was duly seconded)

MR. PRESIDENT COOPER: It has been moved and seconded that the Convention stand adjourned until ten o'clock tomorrow morning. All in favor of the motion let it be known by saying aye, opposed no; the noes have it and the motion to adjourn fails.

MR. THOMPSON: I move you, sir, that we resolve ourselves into the Committee of the Whole for the further consideration of the amending clause.

(Motion was duly seconded)

MR. PRESIDENT COOPER: Motion has been made and seconded that the Convention resolve itself into the Committee of the Whole for the further consideration of the amending clause; all in favor of that motion let it be known by saying aye, opposed no; the ayes have it, and the Convention will resolve itself into a Committee of the Whole, and the Chair will ask Mrs. Rodgers to come to the Chair.

CHAIRMAN RODGERS: The Committee of the Whole is now in session; what is the pleasure of the Committee?

MR. C. C. SIMS: Ladies and Gentlemen of the Convention, I have not lived long enough to talk very much about women; therefore, I shall refrain from that subject. However, this morning and at other times in the Convention I have been reminded of some of the philosophy of an old colored man who used to work on my father's farm;

in fact, we Sims children got a good part of our education from the colored people on the farm. He said there are in general two classes of men, those that talk about women all the time, and those that do something about it.

Ladies and Gentlemen of the Committee, I come before you again pleading for moderation on this question of amending our Constitution. The other day I warned you against the evils of departing too far from the established norms of human experience. Today, I just ask you that we guard against going too far in the direction of overveneration and the past.

If we come here as ninety-nine Gods, the Kingdom of Heaven will surely not be attained. If, however, we admit that a Creator controls all of us and has made laws governing us, and that if we follow these laws, a common denominator will be found that will serve as a base to bring order out of conflicting opinions.

One of these basic laws governing human conduct, for want of a better name, I shall call the law of moderation. The human race has never made much progress when it has failed to follow this law. St. Paul started as a fanatical conservative; and conservatives can be as fanatical as radicals; but one day he saw a great light and became the apostle of moderation.

Aristotle, one of the greatest thinkers of all time, constantly urged the golden mean as the surest guide for human conduct, and he was speaking at a time when a great civilization was disintegrating. Benjamin Franklin probably saved the Constitutional Convention in 1787 more than once by urging moderation. He had no definite plan of his own, but he believed that honest and intelligent men with different points of view could make a workable document if they would respect each other's opinion and be willing to compromise.

Let me emphasize that moderation is not lukewarmness. All great men who have preached moderation have been men of force and character. Becoming moderate did not lessen the zeal of St. Paul.

Any discussion of moderation leads one to the question of liberal versus conservative, an issue that has shown up many times in this Convention. Both groups are absolutely necessary for the successful functioning of a democracy. If taken within reason, they are complements, not opposites.

History shows that all great democracies in their prime had both an intelligent conservative and a reasonable liberal group. The liberal furnishes the motive force, the conservatives the balance wheel and brake. Only when liberalism degenerates into radicalism, or conservatism becomes static or reactionary, is democracy in danger.

Unfortunately, some conservatives would destroy every vestige of liberalism in our society while many liberals would do the same to conservatives. Du Nouy, in his great book "Human Destiny" says that man somewhere in the distant past acquired an urge to go forward, and this is why he is superior to animals. He also implies that man in his quest to go forward will stop at nothing short of immortality. This makes men divine. Who of you will attempt to throttle this divine urge to advance? It may be regulated and controlled, but never stopped, even by constitutional provisions.

Western democracies are today faced with two great challenges; one from within, the other from without. The one from within is what philosophers of history call the "age of confusion" or the "time of trouble." The other from without, is a materialistic, godless Communism.

To check both of these will require a harmonious blending of liberalism and conservatism. The greatest difference between Western culture and Communism is not political, as great as that is; neither is it economic, as great as that is. The chief difference is ethical and religious. We of the West believe that religious and moral standards with roots deep in human experience, touched with divine guidance, control man. Communism refuses to be bound by anything that has gone before. It is a law unto itself, if the will of ruthless men can be called law.

Many conservatives, in their fear of Communism and of the chaos that is developing in Western culture have come to the conclusion that the only safe thing to do is to stop the wheels of progress; to again look at government as primarily a negative factor. I insist that government must be a positive factor if we are to survive. As I see it, America has three choices in the none too distant future. One is Communism; the second, Fascism, which is almost as bad; while the third is a revitalized democracy.

Government must be studied at all times with a view to improvement and even constitutions must change from time to time to aid in our quest of better government. What I have been saying I think can be best summarized by telling an old Greek Myth, the story of Scylla and Charybdis. On one side of a narrow strait of water, the monster of many heads, Scylla, lived. On the other side was the whirlpool, Charybdis. If a pilot of a ship first saw Scylla, his fear was so great that he usually veered too far in the other direction and was destroyed by the whirlpool. If he pulled too far from the whirlpool, the many headed monster, Scylla, would reach out and devour all on board. If, however, the pilot was well trained and not controlled by fear, he could safely navigate the strait, getting neither too close nor yet too far from either danger.

It is now time to turn from the theoretical to the practical; from the general to the specific. There is nothing more fundamental and peculiar to our American system of government than making and altering constitutions. We have originated two equally important ways; one, the legislative amending process, and the other the convention method. One method is for a change or two, the other for a number of changes. Both are equally important and both are equally American. He who would abolish either of them is not conservative, he is an extremist.

Some members of this Convention keep harping on the superiority of the convention plan; they say that the legislative amending plan is dangerous. Then in the next breath denounce California and other states for having such long and detailed constitutions that they must be frequently amended. Yet, most of these constitutions that they so loudly denounce were the products of convention.

Next in order is an examination of American state experience. James Bryce once stated that one of the strong points of the American Federal system was that the states could act as experimental laboratories for new political ideas. It is therefore natural



to expect that some states would be too conservative, some too liberal and some on middle ground in amendments.

Louisiana, California and certain other states have constitutions filled with legislative detail which makes amendments so frequent that the constitutions have been reduced almost to nothing. A friend of mine in Louisiana State University refers to the Louisiana Constitution as the Sears and Roebuck Catalogue; one can find anything in it, and editions appear with monotonous regularity. No student of political science can defend such a condition; but does this justify Tennessee having a Constitution that cannot be amended?

Fortunately, our Constitution is short and contains only organic law as a good constitution should; yet no constitution is sufficiently perfect as to never need changing.

There are now before this body three committee reports; the Chandler report allows an amendment to become effective when ratified by a majority of those for the amendment. This is about middle ground for the United States as a whole. The McGinness amendment would require a two-thirds vote. The majority makes very few changes, merely clarifying the convention method. Now, a word about the present requirement of "those voting for members of the House of Representatives."

This statement is ambiguous; it has already been pointed out that the number can never be mathematically ascertained. The greatest objection, however, is that the amendment may be decided, not upon its merits, but upon certain contingencies that have no relation to the issue.

For example, if an amendment were voted on in a year when competition for legislative seats was great, it would have less chance of passing. Again, Democratic and Republican strength concentrated in different areas would cause fewer contested seats, hence would give an amendment a better chance.

There is another angle; some years ago, when we were voting on an amendment to raise the pay of legislators, I, favoring the amendment, advised my friends not to vote in uncontested legislative races because it would give the amendment a better chance. One man said, "That sounds crazy to me." And, it was crazy. Let us clear up this confusion by substituting two-thirds for a majority of those voting for members of the House of Representatives. Such a step would be American, and would still leave us one of the most conservative amending clauses.

We students of government who have devoted our lives to improving our society look upon this Convention as just one incident, and important one to be sure, in our continuous struggle for good government. I wonder just how many of you who are now defending rights so enthusiastically find this Convention to be your first political offspring. Did you come here just for one purpose, and if you accomplish your objective will you go home and sleep for another eighty-three years; or, are you going to continue to work for better government?

If you go home and sleep, we can never bring order out of chaos at home, nor can we stop the ravages of Communism from abroad. If the average American did as

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much to keep his government in good order as he does to keep his car in good shape, I think our picture would be different.

Now, you can't discharge your civic duties and defeat Communism by getting up in the morning with a righteous look on your face and saying, "Oh, Lord, deliver me from Dean Acheson, damn Alger Hiss, and to hell with Marx and Stalin." It simply is not that simple.

(Applause)

MR. STAIR: Madam Chairman, Ladies and Gentlemen of the Convention, it is a little embarrassing to me as an ordinary citizen to get up and try to debate this question with this large percentage of the legal talent of our State. However, through the week-end along with many of you delegates, I attempted to find some way out of this problem, and find the answer to this amending clause.

I consulted our historians at Knoxville, also Dr. White of this City, and I have a few statistics which I would like to present which I think are conclusive evidence of the soundness of the minority report on the amending clause. I admit that statistics are, many times, boring and uninteresting, but I hope you ladies and gentlemen will bear with me and follow these figures very closely.

I find in the 1835 Convention that the population of the State of Tennessee was 681,904; there were sixty delegates to the Convention and also sixty representatives in the lower House. I find also that approximately eight and one-half per cent of this population voted in the election approving the 1835 Convention. There were 42,644 votes for the adoption, and 17,091 against, a total of 59,735.

This was adopted by approximately seventy per cent of the majority of those citizens voting for that Constitution. At the nearest election following this constitutional vote, I find 95,475 citizens of the State of Tennessee voted for direct representatives in the lower House. This represents approximately fourteen per cent of the population of the State at that time.

Now, I checked also the 1870 Convention and I found that the population at that time was 1,258,520, for which there were seventy-five delegates to the 1870 Convention, and seventy-five representatives in the lower House. Approximately ten and one-half per cent, or just two per cent more of the population voted in this election to approve the 1870 Convention than those that voted on the 1835 Convention; 98,128 citizens voted for it, and 33,372 voted against it. This Constitution which we are attempting to modernize was approved by seventy-four per cent of the majority of the citizens of the State voting for our Constitution.

The nearest election which I could find after the 1870 Convention, and the adoption by the people, the representatives throughout the State received a vote of 440,506, which was approximately forty-five per cent of the vote of the entire State for the representatives.

In bringing those on down now to the 1952 election; we find the population last year was 3,291,718; at this Convention there are ninety-nine delegates, as a result of the freeze which was put on several years ago. Yet, approximately ten per cent of our

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(The Clerk proceeded to call the roll)

THE CLERK: Ayes, 20; Noes, 75; present and not voting, 2.

CHAIRMAN COOK: The motion has failed; proceed with the next amendment.

(The Clerk proceeded to read Amendment No. 7)

MR. TIPTON: Mr. Chairman and Members of the Committee, I might say that I offer this amendment upon my own responsibility and not as a member of the Committee; this amendment does nothing except to provide that an amendment to carry, instead of receiving a majority of the votes cast for representatives, shall receive a majority of the votes cast for Governor. It would only be able to be voted upon when a Governor is elected or every four years; but it takes at least three years to get an amendment through the legislature now.

MR. MCGINNESS: This is not an argument, nor is it inquisitorial; it is just for information. This majority report provides, "Then it shall be the duty of the General Assembly to submit such proposed amendment or amendments to the people in such manner and at such time as the General Assembly shall prescribe."

Your majority resolution does not prescribe, does not require that the amendment be submitted in an election in which a Governor is being elected; they may call a special election; what Governor's election then would it have reference to?

MR. TIPTON: Mr. McGinness, I may say this; I introduced Resolution No. 30 early in the game, which dealt with the identical point you have raised, and which I think covers it; this amendment was prepared hastily, however, and if it is adopted there will be no trouble in working out the language to perfect the very point you have mentioned.

(Call for question)

MR. GILREATH: Mr. Chairman, I would like to say that I favor retaining the ancient language that is in the majority report, and that has been tried and proven for 157 years.

MR. DUGGIN: I move we have a voice vote on this question.

(Motion was duly seconded)

(Requests for roll call)

CHAIRMAN COOK: Proceed with the roll call; those in favor of the motion will let it be known by saying aye, those opposed no.

(The Clerk proceeded to call the roll)

THE CLERK: Ayes, 61; Noes, 36.

CHAIRMAN COOK: The motion is carried; proceed with the next amendment.

(The Clerk started to read Amendment No. 8—)

MR. FLETCHER: That motion related to Mr. Gilreath's amendment further